AN

ACT

To Prevent

FRAUDS

BY

Clandeſtine Moꝛtgages.

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For the more

EASY

OBTAINING

Partitions of Lands.

IN

Coparcenary Joyn-tenancy, and Tenancy in Common, and Bounding and Mearing of Lands.

DUBLIN:
Printed by *Andrew Crook*, Printer to the King's Moſt Excellent Majeſty, on *Cork-Hill*, near *Copper-Alley*, 1697.

An ACT to Prevent Frauds, by Clandestine Mortgages.

CHAP. XXXVI.

WHEREAS great Frauds and Deceits, are too often Practised by Necessitous and Evil disposed persons, in Borrowing of Money, and giving Judgments, Statutes, and Recognizances privately, for securing the Re-payment of the said Money; and the same persons do afterwards Borrow Money, upon Security of their Lands, of other persons, and do not acquaint the latter Lender thereof with the same, whereby such latter Lender is very often in danger to lose his whole Money, or forced to pay off the Debts secured by the said Judgments, Statutes, and Recognizances, before they can have any Benefit of the said Mortgages.

And whereas divers persons do many times Mortgage their Lands more then once, without giving Notice of their first Mortgage, whereby Lenders of Money, upon Second, or after Mortgages, do often lose their Money, and are put to great Charges in Sutes, and otherwise.

For Remedy whereof, and Preventing the same, as much as may be for the Future, May it please Your Sacred Majesty, that it may be Enacted.

And be it Enacted by the King's Most Excellent Majesty, by, and with the Advice and Consent

ſent of the Lords Spiritual and Temporal, and Commons in this preſent Parliament Aſſembled, and by the Authority of the ſame, That if any perſon or perſons, from, and after the Firſt Day of April, which ſhall be in the Year of Our Lord God, One thouſand Six hundred and Ninety eight, ſhall Borrow any money, or for any other Valuable conſideration, for the payment thereof, voluntarily Give, Acknowledge, Permit, or Suffer to be Entred againſt him or them, One or more Judgment or Judgments, Statute or Statutes, Recognizance or Recognizances, to any Perſon or Perſons, Creditor or Creditors; and if the ſame Borrower or Borrowers, Debtor or Debtors, ſhall afterwards Take up, or Borrow any other Summ or Summs of money, of any other perſon or perſons, or for other Valuable conſideration, become Indebted to ſuch perſon or perſons; And for Securing the Re-payment, and Diſcharge thereof, ſhall Mortgage his, her, or their Lands or Tenements, or any part thereof, to the ſaid Second, or other Lender, or Lenders of the ſaid money, Creditor or Creditors, or to any other perſon or perſons in Truſt, for, or to the Uſe of ſuch Second, or other Lender or Lenders, Creditor or Creditors, and ſhall not give Notice to the ſaid Mortgage or Mortgagées, of the ſaid Judgment or Judgments, Statute or Statutes, Recognizance or Recognizances in Writing, under his, her, or their Hand or Hands, before the Execution of the ſaid Mortgage or Mortgages, unleſs ſuch Mortgager or Mortgagers, his, her, or their Heirs, upon Notice to him, her, or them, given by the Mortgagee, or Mortgagées of the ſaid Lands and Tenements, his, her, or their Executors, Adminiſtrators, or

Aſſigns

Aſſigns in Writing, under his, her, or their Hands and Seals, Attested by Two or more ſufficient Witneſſes, of any ſuch former Judgment or Judgments, Statute or Statutes, Recognizance, or Recognizances, ſhall within Six Months after ſuch notice given, pay off, and Diſcharge the ſaid Judgment or Judgments, Statute or Statutes, Recognizance or Recognizances, and all Intereſt, and Charges, due thereupon, and cauſe, or procure the ſame to be Vacated, or Diſcharged by Record. that then the Mortgager or Mortgagers, of the ſaid Lands and Tenements, his, her, or their Heirs, Executors Adminiſtrators, or Aſſigns, ſhall have no Benifit, or Remedy againſt the ſaid Mortgagee, or Mortgagees, his, her, or their Heirs, Executors, Adminiſtrators, or Aſſigns, or any of them in Equity, or elſewhere, for Redemption of the ſaid Lands and Tenements, or any part thereof; but the ſaid Mortgagee and Mortgagees, his, her, or their Heirs, Executors, Adminiſtrators, and Aſſigns, ſhall and may hold, and enjoy the ſaid Lands and Tenements, for ſuch Eſtate, and Term therein as Were or Was Granted and Settled, to the ſaid Mortgagee or Mortgagees, againſt the ſaid Mortgager, or Mortgagers, and all perſon and perſons, lawfully Claming, from, by or under him, her or them, Freed from Equity of Redemption, and as fully to all Intents and Purpoſes, whatſoever, as if the ſame had been purchaced abſolutely, and without any Power, or Liberty of Redemption.

And be it further Enacted by the Authority aforeſaid, That if any perſon or perſons, who have, or hath once Mortgaged, or from, and after

the ſaid Firſt Day of April, ſhall Mortgage any Lands or Tenements, to any perſon or perſons for Security of Money Lent, or otherwiſe Accrued, or become Due, or for other Valuable Conſiderations; and if the ſaid Mortgager or Mortgagers, ſhall again Mortgage the ſame Lands or Tenements, or any part thereof, to any other perſon or perſons, for Valuable Conſiderations; the ſaid former Mortgage being in Force, and not Diſcharged, and ſhall not diſcover to the ſaid Second, or other Mortgagée or Mortgagees, or ſome, or one of them, the former Mortgage or Mortgages, in Writing under his or their Hands; that then, and in thoſe Caſes alſo, the ſaid Mortgager or Mortgagers, his, her, or their Heirs, Executors Adminiſtrators, or Aſſigns, ſhall have no Relief, or Equity of Redemption againſt the ſaid Second, or after Mortgagée, or Mortgagées, his, her, or their Heirs, Executors, Adminiſtrators, or Aſſigns, upon the ſaid after Mortgage, or Mortgages, but that ſuch Mortgagée or Mortgagées, his, her, or their Heirs, Executors, Adminiſtrators, and Aſſigns, ſhall, and may Hold and Enjoy ſuch, more then once Mortgaged Lands and Tenements, for ſuch Eſtate and Term therein, as Were, or Was Granted, and conveyed by the ſaid Mortgager or Mortgagers, againſt him, her, or them, his, her, or their Heirs, Executors or Adminiſtrators reſpectively, Freed from Equity of Redemption, and as fully to all Intents and Purpoſes, as if the ſame had been an abſolute purchaſe, and without any Power, or Liberty of Redemption.

Provided always, and be it further Enacted by the Authority aforeſaid That nevertheleſs,

if

if it ſo happen, that there be more then one Mortgage, at the ſame time made by any perſon or perſons, to any perſon, or perſons, of the ſame Lands and Tenements, the ſeveral late, or under Mortgagées, his, her, or their Heirs, Executors, Adminiſtrators, or Aſſigns, ſhall have Power to Redeém any former Mortgage or Mortgages, upon payment of the Principal Debt, Intereſt, and Coſts of Suit, to the Prior Mortgagée or Mortgagées, his, her, or their Heirs, Executors, Adminiſtrators, or Aſſigns, any thing herein contained to the contrary thereof, in any wiſe notwithſtanding.

Provided always, that nothing in this Act contained, ſhall be Conſtrued, Deémed, or Extended, to Bar any Widow of any Mortgager of Lands or Tenements, from her Dower and Right, in, or to the ſaid Lands, who did not Legally Joyn with her Husband in ſuch Mortgage, or otherwiſe lawfully Bar, or Exclude her ſelf, from ſuch her Dower or Right.

An ACT for the more Eaſy obtaining Partitions of Lands in Caparce nary Joynt-tenancy, and Tenancy in Common, and Bounding, and Mearing of Lands.

CHAP. XXXVII.

Whereas the Proceédings upon Writs of Partition, betweén Coparceners, by the Common-Law, or Cuſtom, Joynt-Tenants, or Tenants in Common, are found by Experience, to be Tedious Chargable, and oftentimes Ineffectual

effectual, by Reason of the difficulty of Discovering the persons and Estates of the Tenants of the several Manours, Messuages, Lands, Tenements, and Hereditaments, to be Divided, and the Defective and Dilatory Executing and Returning of the Process, of Summons, Attachment and Distress, and other Difficulties and Impediments in Making and Establishing of Partitions; by Reason of which, divers persons having Un-divided Parts, or Pur-parts, are greatly Prejudiced and Oppressed, and the Premise are frequently Wasted, or lye Uncultivated, or not Improved, and the Profits of the same thereby Totally are in a greater measure Lost. For Remedy thereof:

Be it Enacted by the King's Most Excellent Majesty, by, and with the Advice and Consent of the Lords Spiritual and Temporal and Commons in this present Parliament Assembled, and by Authority of the same, That from the Sixth Day of November, One thousand Six hundred Ninety seaven, and after Process of Summons, or Attachment upon any Writ of Partition Returned, and Affidavit made thereupon by any Sufficient and Credible person, that due Notice in Writing is, or hath been given of the said Writ of Partition, to the Tenant or Tenants, to the said Writ or Action, and a Copy thereof left with the Occupyer, or Tenant or Tenants, in Possession of the said Lands; or if they, or any of them cannot be found, then to the Wife, Son or Daughter, being of the Age of One and Twenty Years, or upwards, of such Tenant or Tenants, to the said Writ or Action, or Tenant in actual Possession, as aforesaid, by Vertue of any Estate of Freehold for Years, or

to

at Will, or any uncertain Interest, of, or in the said Manours, Lands, Tenements and Hereditaments, whereof the said Partition is so Demanded, unless the said Tenant in Actual Possession, be Demandant in the said Action, at the least Forty Days before the Day of the Return of the said Summons or Attachment; if in such Case the Tenant or Tenants to such Writ, or Tenant in Possession to the Manours, Lands, Tenements and Hereditaments, as aforesaid, or any of them, shall not within the Term after Return of such Writ of Summons or Attachment, or the Term following the same, cause an Appearance to be Entred in such Court, where such Writ of Summons or Attachment shall be Returnable, then, and in Default of such Appearance, the Demandant having Filed his Declaration, the Court may, and shall proceed to Examine the Title of the said Demandant, set forth in his Declaration, and the Content, or Quantity of his Part, or Pur-part of the said Lands and Premises, and according as they shall find his right Part and Pur-part to be, they shall for so much, cause Judgment by Default, to be Entred for the said Demandant, and thereupon Order and Award a Writ, to make Partition, whereby such Proportion, Part and Pur-part, may be set out to him in Severalty; of which said Writ of Execution, Notice shall be given to the Occupier, Tenant or Tenants, of the said Manours, Lands, Tenements and Hereditaments, at least Six Days before the Execution thereof; and the same being after such Notice duly Executed and Returned, and Final Judgment thereupon Entred, the same shall be good, Binding, and Conclusive to all persons whatsoever

ever, and to the ſeveral Rights, Titles, and Intereſts, Which they, or any of them have, or ſhall at any time Claim, or pretend to have in any of the ſaid Manours, Lands, Tenements, and Hereditaments, mentioned in the ſaid Judgment and Writ of Partition ſo Awarded, as aforeſaid, although all perſons concerned, are not Named in the Proceedings thereupon, nor the Title of the Tenants to the ſaid Writ truly ſet forth.

Provided always, That if ſuch Tenant or Tenants, or perſon concerned, or any of them, againſt whom, or their Right or Title, ſuch Judgment by Default is given, ſhall within the ſpace of One Year, after the Firſt Judgment Entred, or in Caſe of Infancy, Coverture, Non ſane Memorie, or Abſence out of the Kingdom, then within One Year after his, her, or their Return, or the Determination of ſuch Inability, apply themſelves by Motion to the Court, where ſuch Judgments are Entred, and ſhew good, and probable matter in Bar of ſuch Partition, or that the Demandant hath not Title to ſo much as he hath ſo Recovered; then, and in ſuch Caſe, the Court may Suſpend, or Set aſide ſuch Judgment, and admit the Tenant or Tenants to appear and Plead, and the Cauſe ſhall Proceed according to Due Courſe of Law, as if no ſuch Judgment had been given: And if the Court upon Hearing thereof, ſhall Adjudge for the Firſt Demandant, then the ſaid Firſt Judgment ſhall ſtand Confirmed, and be good againſt all perſons whatſoever, Except ſuch other perſons as ſhall be Abſent, or Diſabled, as aforeſaid, and the perſon or perſons, ſo Appealing, ſhall be Awarded thereupon, to pay

Coſts,

Costs, or if within such time or times, aforesaid, the Tenants or persons Concerned, Admitting the Demandant's Title, Parts or Purparts, shall yet shew to the Court any Inequality in the Partition, the Court may Award a new Partition to be made, in presence of all parties Concerned, and if they will appear, notwithstanding the Return, and Filing upon Record of the former; which said Second Partition Returned and Filed, shall be Good, Valid, and Firm for ever, against all persons whatsoever, except, as before Excepted.

And be it Enacted by the Authority aforesaid, That no Plea in Abatement shall be admitted, or received in any Sute for Partition, nor shall the same be Abated by reason of the Death of any Tenant or Tenants thereunto.

And be it further Enacted by the Authority aforesaid, That when the High-Sheriff, by reason of Distance, Infirmity, or any other Hindrance, cannot conveniently be present at the Execution of any Judgment in Partition, in such Case, the Under-Sheriff, in presence of Two Justices of the Peace of the County, where the Lands, Tenements, or Hereditaments to be Divided, do lie, shall, and may proceed to Execution of any Writ of Partition, by Inquisition, in due Form of Law, as if the High-Sheriff were then personally present; and the High-Sheriff thereupon, shall, and is hereby Enabled and Required to make the same Return as if he were personally present at such Execution. And in Case such Partition be Made, Returned, and Filed, he or they that were Tenant or Tenants of any of the said Messuages, Lands,

Tenements,

Tenements, or Hereditaments, or any Part or Pur-part thereof, before they were so Divided, shall continue, and be Tenant or Tenants, for such Parts Set out severally to the respective Land-lords, or Owners thereof, by, and under the same Conditions, Rents, Covenants, and Reservations, where they are, or shall be so Divided, and the Land-lords and Owners of the several Parts and Pur-parts so Divided, and Allotted, as aforesaid, shall Warrant and make good unto their respective Tenants, the said several Parts severally after such Partition, as they are or were Bound to do by any Copy, Lease, or Grant of their respective Parts before any Partition made; and in Case any Demandant be Tenant, in Actual Possession to the Tenant, to the Writ or Action, for his Part and Proportion, or any Part thereof in the Messuages, Lands, Tenements, and Hereditaments to be Divided, by Virtue of a Writ of Partition, as aforesaid, for any Term of Life, Lives, or Years, or uncertain Interest, the said Tenants shall stand and be Possessed of the said Pur-parts, and Proportions, for the like Term and under the same Conditions and Covenants, when it is set out in severalty, in pursuance of this, or any other Act, Statute, or Law, to that purpose.

And be it further Enacted by the Authority aforesaid, That the respective Sheriffs, their Under-Sheriffs, and Deputies; and in Case of Sickness, or Disability in the High-Sheriff, all Justices of the Peace Within their respective Divisions, shall after convenient Notice, give Due Attendance to the Executing such Writ of Partition, unless reasonable Cause be shewn to the Court upon Oath, and then Allowed of, or other-

wise

wiſe be liable every of them to pay unto the Demandant ſuch Coſts and Damages, as ſhall be Awarded by the Court, not exceeding Five pounds, for which the Demandant, or Plantiff, may bring his Action in any of His Majeſty's Courts of Record at Dublin, Wherein no Eſſoyn, Protection, Priviledge, or Wager of Law ſhall be Allowed, or more then One Imparlance. And in Caſe the Demandant do not Agree to pay unto the Sheriff or Under-Sheriff, Juſtices and Jurors, ſuch Fees as they ſhall reſpectively Demand for their pains and Attendance in the Execution of the ſame, and Returning thereof; then the Court ſhall Award what each perſon ſhall Receive, having reſpect to the Diſtance of the place, from their Reſpective Habitations, and the time they muſt neceſſarily ſpend about the ſame, for which they may ſeverally bring their Actions as aforeſaid.

Provided, that this Act ſhall continue in force for Seaven Years, and from thence to the end of the next Seſſion of the next Parliament, and no longer.

And Whereas many Inconveniencies, and Law-Sutes, have heretofore Ariſen, and may hereafter Ariſe, by Reaſon the Bounds of the ſeveral Propriеties of Lands Within this Kingdom, are not ſufficiently Diſtinguiſhed, by certain and known Wears.

For prevention whereof, and for the better carrying off the Water, and Draining the Bogs, and Wet Lands, and Improving the ſame.

Be it Enacted by the Authority aforeſaid, That where the Wears of Lands, between Propriety and Propriety, have, or ſhall hereafter

be ſet out, or Aſſertained by a Writ of Partition, Perambulation, or otherwiſe, the ſame ſhall at Equal Charge of the Proprietors thereof, or their Tenants, be Incloſed with good Ditches, where Earth ſufficient may be had to make the ſame, and therein one or two Rows of Quick-ſets ſhall be Planted; and where Earth ſhall be Wanting, ſuch other Fences ſhall be made, as the nature of the Soil ſhall permit. And where Lands are Leaſed for a long term, it may ſeem Unequal to lay the Charge of ſuch Ditches and Fences on the Landlords.

Be it therefore Enacted, that where Lands are held in Fee-farm, or for Lives Renewable for ever, or for a Term of Sixty Years, to run from the Sixth Day of November, One thouſand Six hundred Ninety ſeaven, there the Charge of making the Wears, or Fences, as aforeſaid, ſhall be intirely born by the Tenant; and where Lands are Leaſed for Lives, wherein Three Lives ſhall be Current, or for Years, where Twenty One Years ſhall be Unexpired, at, or upon the ſaid Sixth day of November, One thouſand Six hundred Ninety ſeaven, there the ſaid Wears ſhall be Incloſed at the Equal Charge of Landlord and Tenant; and where Lands are Leaſed for any leſſer time, or Term, the Bounds ſhall be Incloſed at the Sole Charge of the Landlord.

Provided, That nothing in this Act Contained, ſhall be Taken, or Conſtrued to be Taken, to make Void any Covenants heretofore made betwéen Landlord and Tenant, Relating to the Incloſing of Wears.

And

And be it further Enacted by the Authority aforesaid, That whatsoever person or persons, Chargeable by this Act, with the Fencing and Closing of their Bounds, as aforesaid, who shall not have Actually done the same within Six Months after such Partition made, shall Forfeit for his, or their neglect, One Year's Value of the said Land, One Moyety thereof, to the use of the Poor of the Parish, where such Lands shall lie, and the other Moyety to him, or them, that will Sue for the same: And if the person or persons, Chargeable with the Inclosing his Wears, as aforesaid, shall further neglect to do the same within One Year, he, or they, so Offending against this Act, shall Forfeit Two Years Value of the said Lands, to be Paid and Recovered in manner aforesaid.

And it is hereby further Enacted by the Authority aforesaid, That all Wearing, Fences Ditches and Drains, made, or hereafter to be made, be, and shall from time to time, and at all times hereafter, at the Equal Charge of the Tenants, and Occupiers of the said Lands, be kept open Scoured and Cleansed, that the Water may not stand, but pass away, and that whatsoever person or persons shall refuse or neglect to do the same, shall Forfeit for such refusal and neglect, One Year's Value of the said Land, to be Recovered in such manner, and to such Uses, as is herein before Expressed.

FINIS.